



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MTI - 203465

PRELIMINARY RECITALS

Pursuant to a petition filed on October 15, 2021, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on December 16, 2021, by telephone.

The issue for determination is whether the agency correctly issued a medical assistance overpayment tax intercept notice for an unpaid public assistance debt.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On September 30, 2019, the agency determined that petitioner was over paid medical assistance.

3. On October 1, 2019, the agency issued to petitioner a medical assistance overpayment notice, with an appeal deadline of November 15, 2019.
4. On October 17, 2019, petitioner appealed the overpayment determination.
5. On November 13, 2019, the petitioner failed to appear at hearing and the appeal was dismissed on December 13, 2019.
6. On January 3, 2020, The agency mailed to petitioner a repayment agreement.
7. On February 4, 2020, July 2, 2020 and August 4, 2020, the agency mailed dunning notices to petitioner regarding the overpayment debt.
8. On June 3, 2021, the agency issued an Order to Compel Payment regarding the overpayment debt. This determination was not appealed.
9. On September 17, 2021 the agency issued a notice of tax intercept regarding the overpayment debt.
10. On October 18, 2021, the Division received petitioner's request for hearing by U.S. Mail, postmarked October 15, 2021.

DISCUSSION

The Department of Health Services may take a variety of actions to attempt to collect past due BadgerCare Plus overpayments including but not limited to intercepting an individual's state income tax returns and/or credits and using those monies to reduce any outstanding overpayment claims. Prior to doing so, the Department of Health Services must: (1) properly notify the individual of the overpayment and wait until the overpayment determination either has not been or no longer can be appealed; (2) bring an action to enforce the liability or issue an order to compel payment of the liability; and, if the debtor fails to comply with the order, obtain a judgement from a circuit court; (3) send a notice to the debtor's last known address of its intent to set off the individual's state tax refund; and (4) wait until the tax intercept action either has not been or is no longer under appeal. See Wis. Stat. §49.85 and §49.497(1m).

An individual who owes a past due public assistance debt to the Department of Health Services has a right to file an appeal of collection of that debt via tax intercept as described below:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the [Division of Hearings and Appeals] ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Wis. Stat. §49.85(4)(a); see also, Wis. Stat. §49.85(3)(a)2 and Wis. Admin. Code §DHA 3.03(1)(m). A debtor must file his or her appeal within 30 days after the date of the notice of state tax intercept. See Wis. Stat. §49.85(3)(a)2; see also Wis. Admin. Code §§DHA 3.03(1)(m) and 3.05(3)(b). If the appeal is not filed within that time period, the Division of Hearings and Appeals ("DHA") must dismiss the request. Wis. Admin. Code §HA 3.05(4)(e).

Petitioner testified regarding the overpayment determination, stating that it was invalid because he called to cancel Medical Assistance and the agency refused to cancel it. Petitioner had an opportunity for hearing on that matter. He failed to appear. He did not dispute that at hearing. The agency has established the overpayment, claim [REDACTED] in the amount of \$2,38.75 for the period from March 1, 2018 to July 31, 2018. I cannot address the overpayment in this proceeding because petitioner has already had an opportunity for hearing on that matter.

The agency took all necessary action to issue the tax intercept notice. It established the overpayment and issued an order to compel payment, which petitioner did not appeal, then notified petitioner of its intent to use tax intercept to recover the debt. Further, petitioner received a repayment agreement and signed and returned it, acknowledging the debt and the agency mailed three dunning notices to him.

CONCLUSIONS OF LAW

The agency correctly issued a tax intercept notice regarding petitioner's medical assistance overpayment debt.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of January, 2022

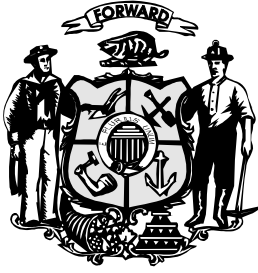


\s _____

Beth Whitaker

Administrative Law Judge

Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2022.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability